

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

**FILED
CLERK**

11/25/2013

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

-----X
: 11-CV-213 (AKT)
EAST END ERUV ASSOCIATION, : 11-CV-252 (AKT)
INC., et al., : 13-CV-4810 (AKT)
Plaintiff, :
: November 8, 2013
:
V. : Central Islip, NY
:
THE TOWN OF SOUTHAMPTON, :
et al., :
Defendant. :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE A. KATHLEEN TOMLINSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: ROBERT SUGARMAN, ESQ.
YEHUDAH BUCHWEITZ, ESQ.
ERICA WEISGERBER, ESQ.
ZACHARY MURDOCK, ESQ.

For the Defendant: BRIAN SOKOLOV, ESQ.
LEO DORFMAN, ESQ.
JELTJE DeJONG, ESQ.
JOSHUA SHTEIERMAN, ESQ.
SETH PRESSER, ESQ.

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1 THE CLERK: Calling case 13-CV-4810, East
2 End Eruv Association, Incorporated v. The Town of
3 Southampton. Also calling case 11-CV-213, East End
4 Eruv Association, Incorporated v. The Village of
5 Westhampton Beach, et al., and case 11-CV-252, Verizon
6 v. The Village of Westhampton Beach, et al.

7 Please state your appearances for the
8 record.

9 MR. SUGARMAN: Good morning, your Honor.
10 Robert Sugarman and Yehudah Buchweitz from Weil Gotshal
11 & Manges, pro bono counsel for the East End Eruv
12 Association and the individual plaintiffs.

13 THE COURT: Good morning.

14 MS. WEISGERBER: Good morning. Erica
15 Weisgerber, Debavoise & Plimpton, for Verizon New York.

16 THE COURT: Good morning.

17 MR. MURDOCK: Good morning. Zachary
18 Murdock, Laze Aptheker Rosella & Yedid for LIPA (ph).

19 THE COURT: Good morning.

20 MR. SOKOLOV: Brian Sokolov, Sokolov Stern,
21 LLP, for The Village of Westhampton Beach, defendants.

22 THE COURT: Good morning.

23 MR. DORFMAN: Good morning, your Honor. Leo
24 Dorfman from Sokolov Stern, LLP, for the same
25 defendant.

1 THE COURT: Good morning.

2 MS. DeJONG: Jeltje DeJong of the firm of
3 Devitt Spellman Barrett, for the Village of Quag (ph).
4 Good morning, your Honor.

5 THE COURT: Good morning.

6 MR. SHTEIERMAN: Good morning, your Honor.
7 Joshua Shteierman from Devitt Spellman Barrett, for the
8 Village of Quag.

9 THE COURT: Good morning.

10 MR. PRESSER: Good morning, your Honor.
11 Seth Presser from Jaspan Schlessinger, LLP, for the
12 Town of Southampton.

13 THE COURT: Good morning as well. You can
14 see we're doing well with sequestration. We're down to
15 one microphone on that side. In any event, we'll take
16 it from there.

17 Well, I'm happy to see this illustrious
18 calling together of counsel one more time here. We've
19 spent some time trying to get our ducks in a row as to
20 where this case is going. There are a number of things
21 I want to go over with you this morning. I'm just
22 going to ask you to have some mercy on me. Let me get
23 through them, and then I will open the floor to
24 whatever else anybody wants to address today, all
25 right?

1 First of all -- and I'm starting probably
2 from more recent and working my way back. I'm talking
3 specifically now about CV-13-4810, which is the action
4 -- the new action from East End v. The Town of
5 Southampton and the Zoning Board.

6 First of all, it appears to me that what
7 happened here essentially is that the plaintiffs did
8 follow the suggestion/direction/urging, however you
9 want to characterize it, of Judge Wexler from February
10 4th, which was to complete the process with the Town and
11 then come back. It appears that was done, on the basis
12 of the new complaint that's been filed.

13 What this says to me is, I need to at least
14 clarify whether or not the original claims set forth in
15 the first complaint against the Town are now moot for
16 all purposes, and I would at least like to get an
17 answer with regard to the plaintiffs' position on that.

18 MR. BUCHWEITZ: Yes, they've been supplanted
19 by the new complaint.

20 THE COURT: Fine.

21 The motion to intervene by JPOE is sub
22 judice at this point and a decision will be issued on
23 that very shortly.

24 The defendants here wish to move to dismiss
25 the new action. As you may have noted from my

1 individual practice rules, I don't have any pre-motion
2 conference requirements if lawyers wish to make a
3 motion in good faith. So I'm going to permit the
4 motion because that is how I do things. What I would
5 like to do, and I'll come back to this in a moment, is
6 to get a briefing schedule in place for that motion.

7 The defendants have also asked to have
8 discovery stayed. What I'm going to do actually is
9 grant a partial stay. I want the parties to exchange
10 their requests for documents and their responses to
11 those requests, but as to any interrogatories or
12 depositions, I am going to hold off on those. Those
13 will be stayed until the motion is decided.

14 Let me back up first of all and talk to you
15 about a briefing schedule on the motion to dismiss this
16 action. I'm open to have the defendants tell me how
17 long they wish before they're in a position to submit
18 their papers.

19 MR. PRESSER: Your Honor, we would request
20 sixty days to submit that motion to dismiss. The
21 reason for the somewhat lengthy period there is
22 obviously the two holidays.

23 THE COURT: Yeah, I was going to say, that
24 was not what I was expecting to hear, but go ahead.

25 MR. PRESSER: There are a number of holidays

1 between now and that sixty-day period, including
2 Thanksgiving, which also includes Hanukkah this year,
3 and then the Christmas and New Year's holidays. So
4 we're requesting sixty days. We'll be getting it in
5 just after the New Year, and we'll give defendants
6 however long they wish for their response. Sorry,
7 plaintiffs for their response.

8 THE COURT: Do plaintiffs want to be heard?

9 MR. SUGARMAN: Yes, your Honor. That to us
10 is much too long. I mean, this complaint has already
11 been served, and I would suggest that thirty days is
12 more than sufficient. Yes, there's a Thanksgiving
13 holiday in there but thirty days would bring it to
14 December 8th or thereabouts, which is a Sunday, so
15 December 9th. And then we would file our answering
16 papers within two weeks.

17 Your Honor, may I just say that the overall
18 strategy of the defendants in this case has been just
19 to continue to delay. Another summer has passed
20 without (ui), and we would like very much to attempt to
21 get a resolution in the district court before the next
22 summer passes. So everything that we're going to say
23 today is really directed toward that goal, and we think
24 that the time frames we're going to propose are
25 reasonable, so this is the first test of that.

1 THE COURT: All right.

2 MR. PRESSER: Your Honor, obviously
3 defendants disagree with that position in the entirety.
4 At a conference before Judge Wexler, plaintiffs made
5 that same claim, claiming defendants were delaying this
6 action, and asked for an expedited schedule on certain
7 issues in that case. Judge Wexler's response was, and
8 I'm quoting, "Wait a while. It has taken you six
9 months to make an appeal from the inspection from one
10 to another, now you will rush everything."

11 The Town of Southampton is a municipal
12 entity. They are not insured for this litigation. So
13 every time something gets expedited in a time frame, it
14 costs the Town more. In this case, a motion to dismiss
15 needs to be drafted, and I assume we'll have a further
16 discussion on requests and responses. But this is not
17 so much the motion to dismiss but together, this is an
18 overwhelming task.

19 The complaint itself is incredibly lengthy
20 and accompanying the complaint are 2,000 pages of
21 exhibits. It's not a small task to just do a little
22 bit of briefing on. I would go down to 45 days in my
23 request if plaintiffs would agree to that. But to say
24 we're somehow intentionally delaying this action -- it
25 took the plaintiffs quite some time to attempt to

1 exhaust their administrative remedies, and part of the
2 motion to dismiss will be that they still have not done
3 so.

4 MR. SUGARMAN: Your Honor, if I may. I'm
5 not going to go into the detail. I refer your Honor to
6 a letter that we wrote to Judge Wexler on July 5th,
7 2012, which sets forth the reasons why it took so long
8 to do Southampton. It's in significant part because we
9 were given inaccurate information by the Town's
10 lawyers.

11 But that aside, this complaint has been
12 pending -- it was filed on August 26th. All of these
13 issues have been briefed before. So to say that now,
14 other things have to be drafted, it just doesn't make
15 any sense. If the Town of Southampton made the
16 decision not to get insurance, that was their decision,
17 and they have to live by it.

18 As your Honor has pointed out in her
19 opinion, plaintiffs' constitutional rights are at issue
20 here. And to say that we need more time because we're
21 not insured and it's going to cost the Town of
22 Southampton money is just not, in our view, an answer
23 to that.

24 THE COURT: All right, I understand both
25 sides' positions here. And just so you're all aware --

1 I think you are aware, I deliberately asked that the
2 transcripts of all the proceedings before Judge Wexler
3 be given to me so I could follow this, since many of
4 the rulings per se are not in the ECF notations. And
5 I've gone through all of those and I've gone through
6 the correspondence in the cases as well.

7 There's a lot to try to recall here but I
8 can promise you that at least the materials have been
9 gone through. I am familiar with the arguments here
10 and I'm familiar with the positions of all the parties
11 who've been involved here.

12 Here's what we're going to do. Even 45 days
13 puts us back in the middle literally of the Christmas
14 holidays. So what I'm going to do is this. The
15 defendants' papers will be due by January 3rd, and then
16 you tell me how long you want to respond.

17 MR. BUCHWEITZ: January 17th, your Honor, two
18 weeks.

19 THE COURT: That's fine. January 17th
20 opposition, and then you've got until the 29th to get
21 any replies in.

22 MR. PRESSER: Thank you, your Honor.

23 THE COURT: And as I said, I'm not staying
24 document discovery. So I'd like to get a schedule in
25 place quickly to serve the demands and to get those

1 responded to. You certainly know what the scope of
2 documents consists of here, based on all of the prior
3 litigation that's gone on with this.

4 MR. SUGARMAN: Your Honor?

5 THE COURT: Yes.

6 MR. SUGARMAN: May I speak to that issue,
7 or I'll wait until -- I didn't know that you were
8 finished.

9 THE COURT: Well, it seems to me certainly
10 by the 25th of this month, everybody should be able to
11 get their demands out. Again, we're only talking about
12 document demands here. Anybody have an issue with
13 that?

14 MR. BUCHWEITZ: No, we're fine with that,
15 your Honor.

16 MR. PRESSER: No, your Honor, that's fine
17 for demands.

18 THE COURT: It would seem to me that a lot
19 of the paper here has already been produced but I'm not
20 sure what the composed demands themselves are going to
21 look like. You've got until December 31st to respond.

22 MR. PRESSER: Your Honor, may I be heard on
23 that?

24 THE COURT: Go ahead.

25 MR. PRESSER: Before the Town was dismissed

1 from this case, we had begun the discovery process,
2 including the ESI process. So I'm not going to deny a
3 good portion of our work has begun. We have, or I
4 should say the Town has -- it's not in my firm's
5 possession yet -- a hard drive which is believed to
6 have 30,000 ESI pieces on it that need to be reviewed
7 by my firm, first for relevance, then again for
8 privilege.

9 In addition, we need to review the discovery
10 that has gone on in the other actions thus far. I
11 mean, we stopped working on the case. We were
12 dismissed from the case. Everyone else has moved
13 forward over those nine months with discovery. We need
14 ample opportunity to go through all that, to raise our
15 objections, and it can't possibly be done by December
16 31st. That hard drive perhaps could be done. We need
17 to get new contracts with the vendor we hired to do it
18 and get the ball rolling.

19 THE COURT: Let me stop you for a minute.
20 Why would you potentially be doing two separate
21 reviews, one for relevance and a separate one for
22 privilege. That makes no sense to me at all.

23 MR. PRESSER: Well, I don't mean two
24 completely separate reviews in that sense. That is not
25 the impression I meant to give, just that they're being

1 reviewed for two different purposes. It's sort of a
2 step and a half, not a full two steps. And I have to
3 work with the vendor on how that's going to happen, if
4 we can continue to use that vendor, which I hope we
5 can.

6 This is a substantial undertaking. In
7 addition, I'm sure the new requests, the new demands
8 that are going to come out are going to widen the scope
9 greatly because they're going to include the
10 plaintiffs' additional efforts to exhaust their
11 administrative remedies and all the additional events
12 that have gone on in that time period, which even if
13 that's another 15,000 ESI pieces --

14 When all is said and done, my firm is going
15 to have to look at 100,000 pieces of paper at municipal
16 expense by December 31st. I don't think it's feasible,
17 much less reasonable. I don't think it can be done in
18 that time period on a municipal budget. We have cited
19 some cases saying that with a motion to dismiss
20 pending, for a municipality and the taxpayer to bear
21 this expense, when even if some of the claims are
22 dismissed, the Town and taxpayers will be saved that
23 burden, that's a significant consideration.

24 THE COURT: I understand that, and it is a
25 consideration that I've taken into account. What I'm

1 going to have you do is the following, and paper
2 discovery is going forward, period. At this juncture -
3 - and why any municipality should be looking at in
4 excess of 100,000 documents in this case, to me, with
5 regard to the obligations of counsel on both sides to
6 confer and to apply some principles of proportionality
7 here with regard to production --

8 Today is Friday. I'm giving you folks until
9 next Friday, particularly for counsel for the Town of
10 Southampton and plaintiffs' counsel, to have a good
11 faith -- to what extent and time it takes between now
12 and next Friday, to try to narrow the scope of what
13 this is ESI production is going to be, all right?

14 MR. SUGARMAN: Your Honor --

15 THE COURT: Because if we get to a point
16 that the Town still believes that this is unreasonable,
17 then we're going to start talking about cost sharing
18 for the production, all right, and we'll deal that as I
19 need to deal with it. But I expect the parties to have
20 a heart to heart on this between now and next Friday
21 and try to narrow the scope of what needs -- absolutely
22 needs to be provided here to the plaintiffs in order
23 for them to move forward.

24 And then I want a report back in writing as
25 to where you are as of the following Monday, which

1 would be -- let me just make sure of the date right
2 here. That will be the 18th, all right?

3 MR. SUGARMAN: Your Honor.

4 THE COURT: Yes, counsel.

5 MR. SUGARMAN: What I just wanted to point
6 out is, on February 1, 2013, Mr. Guido of the Jaspán
7 firm wrote you a letter on behalf of all counsel,
8 requesting a three-week extension of the then discovery
9 process, pointing out that the then deadline was
10 unreasonable but that exchange of letters had been
11 taking place, collecting and reviewing internal
12 documents. All counsel held a productive meet and
13 confer to discuss the statute. All counsel agreed that
14 the February 7 date was not feasible and requested a
15 three-week extension.

16 THE COURT: I get that.

17 MR. SUGARMAN: So --

18 THE COURT: And then on February 4th, Judge
19 Wexler deemed them out of the case.

20 MR. SUGARMAN: I understand that. But what
21 Southampton agreed to at that time was that they're
22 going to get everything done in three weeks. They were
23 out, now they're back in. So why is now Southampton's
24 counsel saying this is impossible, when then they said,
25 we are far along and we need only three weeks.

1 THE COURT: Okay.

2 MR. SUGARMAN: All I'm saying is, your
3 schedule that you proposed is even more than what they
4 and we all requested. So it has a hollow ring,
5 frankly --

6 THE COURT: I understand that.

7 MR. SUGARMAN: -- for them to say now
8 something much different than they said then. And I
9 realize -- and I'll address this at the time you want
10 me to -- there are added parties. The ZBA is added and
11 -- but with respect to the non-ZBA documents, they said
12 three weeks on February 1st and now they're saying much
13 different.

14 THE COURT: Okay. All the more reason why
15 everybody is going to comply with their obligations
16 under Rule 37.3 and you're going to talk to each other.
17 You're going to attempt to work this out and you've got
18 until next Friday to do so. And if you can't, then
19 I'll take it from there, all right?

20 MR. SUGARMAN: Thank you.

21 THE COURT: But as I said, I want something
22 in writing from you by the 18th as to where things
23 stand. Meanwhile, that December 31st date remains in
24 place, okay?

25 That brings me over to the Verizon action

1 against the municipal defendants and the original
2 action by the EEEA against the municipal defendants.
3 First of all, I'd like to just have some confirmation -
4 - please forgive me but without a lot of colloquy. I
5 just want an answer. Has anything changed since the
6 findings of fact and conclusions of law were submitted
7 to Judge Wexler, from the plaintiffs' perspective?

8 MS. WEISGERBER: No, your Honor.

9 THE COURT: All right. How about from
10 defendants?

11 MR. SOKOLOV: No, your Honor.

12 THE COURT: Okay. It was suggested to me at
13 the last conference that I might want to consider
14 rendering a decision based solely on the paper
15 submissions, or the alternative obviously was to
16 proceed with a bench trial, particularly directed to
17 the question of who has the authority to attach the
18 laches as Judge Wexler laid out.

19 I would like to know, has anybody's position
20 changed since the last conference?

21 MS. WEISGERBER: No, your Honor.

22 MR. SOKOLOV: No, your Honor.

23 THE COURT: And your position, plaintiffs,
24 is you would like the bench trial, correct?

25 MS. WEISGERBER: We believe that it could be

1 decided on the papers.

2 THE COURT: Okay, all right.

3 What about the defendants?

4 MR. SOKOLOV: We believe even stronger than
5 at the last conference that it could be decided on the
6 papers.

7 THE COURT: Then since everybody is in
8 agreement, that's what I will do.

9 I'm also aware that there's a motion pending
10 by the municipal defendants to strike the amicus brief,
11 and I will address that in due course, in conjunction
12 with reviewing the issues that I now will handle based
13 solely on the submissions.

14 With regard to these two actions, I would
15 like again briefly from each party, what is the status
16 of paper discovery in these two actions?

17 MR. BUCHWEITZ: As to Westhampton Beach and
18 Quag, we believe we're done.

19 THE COURT: Okay.

20 MR. BUCHWEITZ: We've resolved the last of
21 the disputes with them in the interim period.

22 THE COURT: Quag I know had gotten an
23 outside vendor to assist with its ESI. At least with
24 the representations were made at the last conference, I
25 expected that that issue would have been resolved. So

1 that leaves Southampton at this point, correct? Well,
2 Southampton is out of that original packaging.

3 MR. BUCHWEITZ: Correct.

4 THE COURT: All right.

5 MR. DORFMAN: Judge, that's not exactly the
6 case with respect to plaintiffs' production to
7 Westhampton Beach.

8 THE COURT: Okay.

9 MR. DORFMAN: Some months ago, we raised a
10 number of issues with their privilege logs and
11 specifically with certain categories of documents that
12 were withheld on account of privilege. I'm not sure
13 that that issue is exactly ripe for the Court today.

14 THE COURT: Okay.

15 MR. DORFMAN: I'm sure we could discuss that
16 further before there's a need for a motion. But there
17 might very soon be a need for a motion on the issue of
18 privilege.

19 THE COURT: All right. Well, here's what
20 I'm --

21 MS. DeJONG: I'm sorry. Quag would join
22 with the --

23 THE COURT: Okay. Here's what I want you to
24 do. You take the next two weeks and you have a
25 conversation, all of you together on this issue. If

1 it's not resolved, then I'm going to give you a
2 deadline to file any letter motions directed to
3 compelling the production or issuing a protective
4 order.

5 MR. BUCHWEITZ: Your Honor, that's fine. I
6 would just point out that we responded to their last
7 request on this with a supplemental privilege log and a
8 response on May 14th and haven't heard anything from
9 them until today.

10 THE COURT: Okay. Well, you're all going to
11 have a lot to talk about.

12 Any motions for court intervention on these
13 issues have to be filed by December 4th, all right?
14 Keep in mind two things: One, on letter motions,
15 you're limited to three pages, unless you're filing in
16 conjunction with Rule 37.1. It sounds to me like these
17 issues have to do more with the privilege log issues
18 than with regard to any responses per se to a
19 particular interrogatory or particular document
20 request.

21 If that's not the case and if this is
22 something you're directing to a specific interrogatory
23 response or document response, then I expect you to
24 follow Rule 37.1 in the way you pose that to the Court.
25 And for that purpose, if that's what we're down to,

1 then I will raise the three-page limitation because
2 you'll need to take up more space than that just
3 getting through some of these. Remember, 37.1 says you
4 state the request that was made verbatim. Underneath
5 that, you state the response that was made verbatim.
6 And then underneath that, you give me your objections
7 and what requests for relief you're seeking from me,
8 all right?

9 MS. WEISGERBER: Your Honor, would you like
10 an update on discovery in the Verizon action as well?

11 THE COURT: Yes, please.

12 MR. BUCHWEITZ: I'm sorry. Before you
13 continue, just so I'm clear, is the Court saying that
14 if we are not raising issues with specific requests,
15 then we'll be limited to three pages?

16 THE COURT: Correct.

17 MR. BUCHWEITZ: Thank you. I apologize.

18 THE COURT: As I said, keep in mind you have
19 to put a certification up front to the papers, which
20 everybody seems to be forgetful of. A certification in
21 compliance with Rule 37.3, and you need to tell me how
22 you complied. Part of that method of compliance better
23 include confirmation to me that you actually spoke to
24 each other in a good faith attempt to resolve these.

25 Go ahead, counsel.

1 MS. WEISGERBER: With respect to Westhampton
2 Beach and Quash, Verizon and I believe LIPA as well
3 believe that all written and document discovery is
4 complete. We've made our productions, we've exchanged
5 interrogatories, and we think that is all complete in
6 that action.

7 With respect to Southampton, we exchanged
8 interrogatories and responses to interrogatories.
9 Everything had moved along. As Mr. Sugarman reported,
10 we were ready to make productions shortly after the
11 February conference with Judge Wexler. Verizon and
12 LIPA can produce to Southampton at any time. We've
13 completed our review of documents. It's simply burning
14 the disk for them.

15 THE COURT: That's fine.

16 MS. WEISGERBER: We have not received
17 documents from Southampton yet, though.

18 THE COURT: Okay. Let me hear about that.

19 MR. PRESSER: My understanding from Judge
20 Wexler's ruling is that Southampton -- that case was
21 stayed as against Southampton, which is --

22 THE COURT: I read the ruling the same way,
23 frankly. You're not disputing that, I assume, anyway,
24 right?

25 MS. WEISGERBER: No, we're certainly not

1 disputing that.

2 THE COURT: Okay.

3 MS. WEISGERBER: But now that the EEEA has
4 refiled its complaint, our understanding is that the
5 case is no longer stayed. We think all three cases
6 should proceed on the same track but with Southampton,
7 there is the outstanding document discovery issue.

8 THE COURT: I guess the question becomes, in
9 the -- never mind, I'll withdraw that. I'd like to
10 keep these on the same track.

11 MR. PRESSER: I understand the benefit of
12 keeping these on the same track. My concern is that it
13 seriously and significantly sort of penalizes
14 Southampton in its ability to have the same time and
15 deliberation in doing this that all the other parties
16 have had over the last nine months. Disputes have been
17 raised, letters have gone back and forth. Some
18 disputes have been resolved. Privilege logs have been
19 made and then supplemented. And we're being asked to
20 accomplish the same thing in roughly a sixth of the
21 time period.

22 THE COURT: Well, I appreciate your
23 argument. Also, counsel, this was stayed, it wasn't
24 dismissed with regard to these other claims.

25 MR. PRESSER: I agree, your Honor.

1 THE COURT: It's not like there's any
2 surprise that this is coming back at this point, all
3 right? The reason that I wanted you to have this meet
4 and confer with the plaintiffs in particular, to try to
5 narrow the focus here and figure out what it's going to
6 take to comply with what you're being asked to do, and
7 why I wanted the report back is, I'll make a
8 determination at that point.

9 MR. PRESSER: Fair enough, your Honor.

10 THE COURT: If it's impossible, and there
11 had better be some way to show me that, for the Town to
12 comply, we may be doing a rolling production at that
13 point, we may do a number of things. But I want the
14 parties to sit down and try to work this out before you
15 get me involved again, all right?

16 MR. PRESSER: Fair enough, your Honor.

17 THE COURT: All right.

18 MS. WEISGERBER: Your Honor, just one point.

19 THE COURT: Sure.

20 MS. WEISGERBER: With respect to Verizon and
21 LIPA, there were not an innumerable number of documents
22 that were being requested and produced by both sides,
23 and we were able to complete our document discovery
24 with Westhampton Beach and Quag. Southampton and LIPA
25 and Verizon had agreed upon -- we had run all the

1 searches. Everybody knew the number of documents that
2 each search term that Verizon and LIPA gave brought up
3 and we knew how many documents Southampton's search
4 terms brought up. We were in agreement on all of that
5 back in February.

6 THE COURT: All right.

7 MS. WEISGERBER: If you would like us to
8 meet and confer, we can --

9 THE COURT: Who were you dealing with at
10 that time?

11 MS. WEISGERBER: -- but we just don't -- our
12 scope -- we're going to still produce the documents
13 that we agreed upon back then.

14 THE COURT: All right.

15 MS. WEISGERBER: So we don't necessarily
16 believe it's necessary to minimize or to decrease the
17 scope of the production with respect to --

18 THE COURT: I'm not asking you to. The only
19 people I asked to do that for are the EEEA plaintiffs.

20 MS. WEISGERBER: Okay. I was just
21 clarifying.

22 THE COURT: Okay?

23 MS. WEISGERBER: Thank you.

24 THE COURT: Okay. The paper discovery in
25 these cases is going to be concluded. I want it

1 concluded and I'm not staying it. But I am staying
2 depositions in the case once again, until these other
3 issues are resolved.

4 Let me just see if there's anything. At
5 this point, there was a motion to compel pending
6 regarding Quag's production. That was the E191. At
7 this point, I'm deeming that moot on two counts. I now
8 know and have confirmation that the production was
9 completed. Also, the other half of the motion with
10 regard to depositions is moot at this point because I'm
11 staying the depositions.

12 Unless there's something I missed there, Ms.
13 DeJong.

14 MS. DeJONG: No, I don't believe so.

15 THE COURT: All right. Now comes the moment
16 I'm holding the breath on, and that is, I'm going to
17 allow each of you to bring up anything else you want to
18 address today, all right?

19 Let me start with plaintiffs's counsel.

20 MR. SUGARMAN: Only one request, your Honor.

21 THE COURT: Sure.

22 MR. SUGARMAN: I think it would be useful
23 and we would request that there be another conference
24 like this the week of January 6th. By that time, much
25 will have been done, and we would like very much to

1 come back and do some longer-range planning, both for
2 depositions, a pretrial order and a trial date. So
3 that's my request.

4 THE COURT: All right. The only thing I
5 could tell you about that -- I mean, taking these cases
6 separately for the moment, I cannot guarantee you in
7 any way I'm going to have a decision on the pending
8 submissions by January 6th. If that's the case, I'm not
9 going to have a schedule -- be prepared to put up a
10 schedule for the rest of the case until that is
11 resolved.

12 I would be happy to have a conference just
13 to make sure that I don't have any issues with people
14 completing the paper discovery, in particular, that
15 I've outlined, and we can do that certainly I think by
16 telephone, as opposed to bringing everybody in here
17 again. But I'm happy to do that. I will have put
18 something else up in the schedule anyway, just to make
19 sure that everybody is covered and there are no motions
20 to be made about productions at this point, all right?
21 So we'll take care of that in just a moment.

22 What about LIPA and Verizon?

23 MS. WEISGERBER: No other issues.

24 THE COURT: All right.

25 MR. MURDOCK: Nothing, your Honor.

1 THE COURT: Let me go over to the defendants
2 then. Mr. Sokolov?

3 MR. SOKOLOV: We have no issues. I just
4 want to, if I can, get clarification on the status of
5 JPO, Jewish People Opposed to (ui). My understanding
6 is they initially moved to intervene in our case.
7 Judge Wexler denied that. That's on appeal in the
8 Second Circuit. Now, a new lawsuit was brought against
9 Southampton, which is consolidated back with us, and
10 there's a motion pending there.

11 Am I correct that between yourself and the
12 Second Circuit, whoever decides their issue first will
13 bind everybody else?

14 THE COURT: I suspect if I reach a decision,
15 depending on where it goes, one side or the other may
16 be up in the Second Circuit. I'm not sure. I don't
17 think I can answer that any better than that right now,
18 all right?

19 MR. SOKOLOV: Nothing else at this point.

20 THE COURT: Okay. Ms. DeJong?

21 MS. DeJONG: Your Honor, we don't have
22 anything further.

23 THE COURT: Okay. Let's see, where am I
24 here? The Town of Southampton.

25 MR. PRESSER: We have nothing further, your

1 Honor.

2 THE COURT: Mr. Presser, forgive me.

3 MR. PRESSER: No worries, your Honor. We
4 have nothing further.

5 THE COURT: Okay. Have I covered everybody
6 then? Yes? Good.

7 We'll put all of this into an order. It
8 will go up sometime within the next day or two. While
9 I have you, let me at least set up this telephone
10 conference, all right? I'd like to put this on for
11 January 7th at 11:30, if that works for everyone. Could
12 you check your calendars?

13 MR. SUGARMAN: That's okay with everyone at
14 this table.

15 THE COURT: Okay.

16 MR. SOKOLOV: That's good for the
17 defendants, too.

18 THE COURT: All right.

19 MR. SOKOLOV: Is there a standard protocol,
20 your Honor, as to who sets up the conference call?

21 THE COURT: I usually ask plaintiffs'
22 counsel to do these. What I'll ask you to do is get an
23 outside telephone service operator, so that everybody
24 here can be heard on the call, all right?

25 MR. BUCHWEITZ: We have our own -- I have a

1 conference number we can use.

2 THE COURT: Good. One other thing occurs to
3 me, and I would just like to address this while
4 everybody is here. Based on what I get back on the 18th
5 with regard to the production for Southampton and the
6 demands made by the EEEA plaintiffs, if I want to take
7 some action to have a further conversation with those
8 parties, does anyone mind from the rest of the group if
9 I do it just with those parties, or do you all want to
10 be involved in the conversation?

11 MS. DeJONG: I don't mind.

12 MR. SOKOLOV: I don't mind, either.

13 MR. SOKOLOV: Verizon and LIPA are okay with
14 that as well.

15 THE COURT: All right. So if I think I need
16 to address this when I get that status update, I may
17 just get counsel for the plaintiffs and Southampton's
18 counsel on the phone, all right? Does that work?

19 MR. BUCHWEITZ: Yes.

20 THE COURT: All right, very good. Let's
21 just say I'll be optimistic and say to you, if I don't
22 talk to you between now and the holidays, I hope
23 everybody, whatever you're celebrating, has a good one.
24 There's an awful lot going on in the world that the
25 rest of us have to be grateful that we're not involved

1 in it, such as the Philippines this morning. So in
2 that spirit, I wish you all happy holiday and I'll
3 speak to you in January.

4 MR. PRESSER: Thank you, your Honor. You as
5 well.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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25 ELIZABETH BARRON

November 22, 2013